SELANGOR COCONUTS BHD

v.

PEMUNGUT HASIL TANAH KEDAH & OTHER APPEALS

COURT OF APPEAL, KUALA LUMPUR
SITI NORMA YAAKOB JCA
ABDUL MALEK AHMAD JCA
DENIS ONG JCA
[CIVIL APPEALS NOS: K-01-30-1994; K-01-31-1994
& K-01-32-1994]
13 APRIL 1999

LAND LAW: *Acquisition of land - Compensation - Award - Appeal against - Methods of assessment - Whether High Court judge erred in law*

The three appeals herein were from the decisions of the High Court in respect of the collector's awards concerning compensation for land acquisition.

Held:
Per Abdul Malek Ahmad JCA

[1] In respect of the first appeal, the learned judge had based his decision on correct principles of law relating to land acquisition. This appeal was therefore dismissed.

[2] In respect of the second appeal, the acquisition thereof and the acquisition in the first appeal were for the same school. Further, no written grounds of judgment were made available and the instant court was not able to comprehend why the learned judge had doubled the collector's award. This appeal was therefore allowed.

[3] In respect of the third appeal, there was no reason to interfere with the finding of the learned judge. This appeal was therefore dismissed.

[Orders accordingly.]

Case(s) referred to:
Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley [1984] 1 CLJ 69 ***(refd)***
Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor [1993] 3 CLJ 337 ***(refd)***
New Serendah Rubber Co Ltd v. Collector of Land Revenue Kuala Lumpur [1981] 2 MLJ 344 ***(refd)***
Ng Tiou Hong v. Collector of Land Revenue Gombak [1984] 2 MLJ 35 ***(refd)***
Siah Brothers Plantation Sdn Bhd v. Pentadbiran Tanah Daerah Kuantan [1993] 3 CLJ 435 ***(refd)***

Legislation referred to:
National Land Code 1965, s. 214A

For the appellants in the 1st & 3rd appeals - Wong Chong Wah (Lim Koon Huan with him); M/s Skrine & Co
For the respondents in the 1st & 3rd appeals - Dato' Mohd Zaki Mohd Yasin SLA

[Appeals from High Court, Alor Setar; Land References Nos: 15-19-85, 15-18-85 & 15-10-1993; [1996] 2 CLJ 527]

Reported by Cindy Chan

JUDGMENT

Abdul Malek Ahmad JCA:

We heard these three appeals together and reserved judgment. We now give our reasons. For convenience, we propose to deal with the three appeals separately. It is pertinent to point out that there is a reversal of roles in the second appeal in view of the decision by a High Court judge different from the one in the first and third appeals.

First Appeal: Rayuan Sivil No: K-01-30-1994

The scheduled land, acquired on 12 April 1984, has an area of 4.5594 acres and was part of Lot 3291 H.S. (D) 240/1979 which is 1532 acres in area. The land is freehold and is categorised under agriculture. Lot 3291 is actually part of Ladang Batu Pekaka with an area of more than 3000 acres. With an undulating terrain, this large estate is planted with oil palm. Access to the then road about 1000 feet away is through an estate laterite road.

The collector made an award of RM9,000 per acre but the appellant was of the view that it should be RM25,000 per acre. The appellant produced seven comparables and the respondent nine. Looking at the plan of the whole area, it is quite clear that the respondent's comparables are further from the scheduled land compared to the appellant's comparables.

The first and fourth comparables of the appellant, for instance, are part of Lot 2710 which learned counsel for the appellant remarked are adjacent to the village of Kuala Ketil just east of Sungei Petani. Although the village is a small town with two rows of shophouses, he stressed, it is a developing area. As for the respondent's comparables, learned counsel for the appellant submitted that apart from being further away, they were parts of large estates and were therefore not appropriate comparables.

The learned High Court judge held that the nine comparables submitted by the appellant were not suitable namely because the valuation report was lacking in essential details as there was no information on the parties to the transactions, the category of land use, the restrictions as to dealings, the status of the interest, the accessibility, the available public amenities, the actual terrain and usage, and the location with regard to whether it is part of a local authority area or otherwise.

Further, he held that the comparables were small lots of 0.25 of an acre to 3.3 acres whereas the subject lot is a very large estate citing *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 and *New Serendah Rubber Co. Ltd. v. Collector of Land Revenue, Kuala Lumpur* [1981] 2 MLJ 344 in support.

He quite appreciated the fact that in the two authorities referred to, the scheduled land comprised the whole subject land unlike the instant appeal where the scheduled land is only a bit more than four acres. However, the scheduled land could not be valued independently as there was no separate title and could not be valued as a separate parcel unrelated to the remaining portion of the subject lot – see *Bertam Consolidated Rubber Co. Ltd. v. Collector of Land Revenue, Province Wellesley* [1984] 1 CLJ 69; [1984] 1 MLJ 164.

For three of the comparables namely Lots 1790, 62 and 63, there was a big difference between the value of the consideration for the transaction and the value assessed by the Valuation Department for the purpose of stamp duty. The transaction prices were RM30,000, RM40,000 and RM380,000 respectively whereas the assessed values were only RM7,000, RM8,500 and RM17,000. These, according to the learned High Court judge, indicated that the considerations and values could not be reliable indications of the fair market value.

The learned High Court judge also commented on the time lapse of the comparable transactions. Only one comparable; that is Lot 70, was transacted in the same year as the scheduled land. The other comparables were in 1976, 1977 and 1978 respectively. Two of the comparables, which are different parts of Lot 2710, were found by the learned High Court judge to be lease transactions and not sales contrary to the requirement enunciated in *Ng Tiou Hong's* case *(supra)*.

Finally, the learned High Court judge, in assuming that the comparable lots were not part of an estate as it was not so identified, stated that the scheduled land, being part of an estate, is subject to the restriction under s. 214A of the National Land Code (see *Bertam's* case *(supra)*). Learned counsel for the

appellant referred to *Kumpulan Sua Betong Sdn. Bhd. v. Ezan Sdn. Bhd. & Anor*. [1993] 3 CLJ 337; [1993] 2 MLJ 289 which only states that *Bertam's* case *(supra)* was relevant. In *Kumpulan's* case *(supra)*, the Supreme Court held that if the owner of an estate intends to sell a portion of an estate land just to one person, then s. 214A of the National Land Code does not apply to such a transaction. The relevant extract of the Supreme Court judgment states:

> While we quite appreciate that the object of s. 214A is to discourage the fragmentation of estate lands we are reminded that the court's function is to interpret, not to make law. We are also quite aware of the consequence that if an estate land is transferred to two or more persons an estate land is fragmented into two or more portions. But we are here dealing with the requirement of an approval of the Estate Land Board. That provision is to be found in sub-s. (4) of s. 214A which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to two or more persons. In other words, where an estate land or only a portion of an estate land is to be transferred to one person, the Estate Land Board's approval is not required. If, therefore, there is any lacuna in the law, it must be corrected through legislative means.

However, the learned High Court judge dealt with the issue in this manner:

> However, whatever learned counsel's purpose might be in submitting the case, and despite the fact that the decision in *Kumpulan Sua Betong* defines the limitations on the application of section 214A of the National Land Code, one thing remains clear: the restriction on the transfer of estate lands imposed by that provision of the National Land Code still exists and *Bertam Consolidated*, which is a decision of the Federal Court, is still the relevant and binding decision for the present purpose as the facts of that case, like the present case, concern land acquisition, whereas the facts of *Kumpulan Sua Betong* do not concern with land acquisition but with the validity of the transfer of a portion of an estate land.

Apart from finding the appellant's comparables unacceptable, the learned High Court judge was of the opinion that the appellant's values did not explain how the figure of RM25,000 per acre was arrived at.

Turning to the respondent's valuation report, the learned High Court judge accepted the first of two comparables namely the sale of Ladang Tikam Batu in the District of Kuala Muda, an area of 779 acres, on 21 April 1983 at RM9,605.42 per acre. The second comparable at Tanjung Pauh Estate in the District of Kubang Pasu, an area of 2147.85 acres, was sold on 16 May 1983 at RM8,279.67 per acre. The learned High Court judge held this was too far away being 75 kilometres from the scheduled land. Further, the first comparable was also the sale of estate land citing *Siah Brothers Plantation Sdn. Bhd. v. Pentadbiran Tanah Daerah Kuantan* [1993] 3 CLJ 435; [1993] 3 MLJ 51.

The first comparable was attacked by learned counsel for the appellant for being 25 kilometres away from the subject lot but the learned High Court judge held otherwise in view of the fact that this was estate land and considering the efficiency of present day transportation. Furthermore, he remarked that there had been a marked absence of recent sales of estate land.

Based on the first comparable, the learned High Court judge explained how he arrived at the figure of RM11,000 per acre. He had rounded up RM9,605.42 to RM10,000 for easy calculation and with an upward adjustment of 10 per cent for the time factor and another 10 per cent for the size of the scheduled land together with a downward adjustment of 10 per cent because the scheduled land did not have a separate title, another RM1,000 was added to the RM10,000 per acre.

Interest was awarded at 8 per cent per annum from the date of possession to the date of payment. As the appellant's claim was viewed by the learned High Court judge to be excessive, no costs were ordered.

We had considered the matter very carefully and are of the view that the learned High Court judge had based his decision on correct principles of law relating to land acquisition. We, therefore, unanimously agree with the learned High Court judge on all points. The appeal is dismissed with costs and the deposit is to go to the respondent to account of the taxed costs.

Second Appeal: Rayuan Sivil No: K-01-31-1994

We did not have the benefit of the grounds of judgment in this case and as such will rely on the notes of proceedings in the court below and the submissions of the parties here. At the outset, we had allowed the respondent's notice of motion to cross appeal out of time as there were no objections from the appellant.

The record shows that there had been a number of postponements since 8 January 1991. On 28 September 1993, the parties were asked to submit a brief outline of arguments. Then on 9 November 1994, apart from stating the parties present, there is only the court decision which reads:

> The court award is @ $18,000/- per acre as offered to @ $25,000/- The $1000/- deposit be refunded and cost and interest to be determined late(r) on.

Since this extract appeared hazy, we had asked for a copy of the relevant judgment. The actual order is that the collectors's award of RM9,000 per acre has been increased to RM18,000 per acre.

The next entry in the notes of proceedings is dated 9 November 1995, which could well be a typing error, considering the year of the earlier entry where, with the same parties present, the record states:

By consent it is agreed that the Faedah of 8% be paid on the additional award from the date of possession in form K i.e. on 30th. April 1995 until the date of full payment.
No order as to costs.
F/C. confirms the consent judgment.

The submissions of the learned State Legal Adviser for the appellant before us was that the purpose of the acquisition on 30 September 1982 was to build a school. Since the scheduled land was outside the local council area, the correct valuation would be RM9,000 per acre. He added that different parts of the same estate had been acquired on five occasions over the years, the last for 1340 acres at RM22,575 per acre on 30 September 1994. For the last acquisition, the collector had awarded RM21,500 per acre but the High Court had increased it to RM22,575.

It was the learned State Legal Adviser's contention that the value of the scheduled land in 1982 cannot be the same as in 1994, which is twelve years later, especially since smaller lots fetch higher prices and bigger estates would be subject to constraints including that under s. 214A of the National Land Code. He concluded that since the comparables listed by them were estate lots of superior locality, the award in this appeal should be RM9,000 to RM11,000 per acre and not RM18,000 as awarded.

Since this acquisition and the acquisition in the first appeal are for the same school, we were inclined not to change our earlier stand. Further, no written grounds of judgment were made available and we were, therefore, not able to comprehend why the learned High Court judge here had doubled the collector's award. We would allow the appeal with costs and dismiss the cross appeal with no order as to costs and reduce the award to RM11,000 per acre in line with our decision in the first appeal. We also order that the deposit be refunded.

Third Appeal: Rayuan Sivil No: K-01-32-1994

According to learned counsel for the appellant, three different titles are involved here namely Lot 860 G 7047, Lot 151 SP 26834 and Lot 152 SP 26835 with areas of 1595.3521 acres, 1.3717 acres and 1.3679 acres respectively. The acquisition was on 8 February 1990.

He added that the scheduled lands were all in a fast developing area but the comparables of the respondent's valuer were away from the subject property. In fact, the first two comparables were abandoned and the respondent relied only on the others for comparables.

On their part, the appellant had five comparables. The first was a sale at RM20,000 per acre. The second comparable was for another part of the same estate as the first comparable for double the amount per acre. However, both these sales were not approved by the Foreign Investment Committee as the Estate Land Board did not give their consent to the transfer.

The third, fourth and fifth comparables were part of the same estate and were transacted at RM42,150, RM24,000 and RM35,000 per acre respectively.

The learned State Legal Adviser referred to the portions of the judgment by the learned High Court judge as to why the appellant's comparables were rejected and the respondent's comparables accepted.

The award of RM19,484,720 had been based on the respondent's valuation at RM25,000 an acre for the first 100 acres in Zone A, RM18,000 an acre for the next 300 acres in Zone B, RM12,000 an acre for the next 500 acres in Zone C and RM8,000 an acre for the remaining 698.09 acres in Zone D.

The appellant is asking for an award of RM35,971,435.50 made up of RM40,000 an acre from the first 200 acres, RM30,000 an acre for the next 300 acres, RM20,000 an acre for the next 500 acres and RM15,000 an acre for the remaining 598 acres apart from RM77,996.50 for the buildings existing thereon.

The scheduled lands are part of the Bukit Mertajam Estate held under 94 titles with a total area of 9,633.39 acres and divided into four areas namely the Sera Division with 2461.41 acres, the Kelang Baru Division with 3156.77 acres, the Batu Putih Division with 2706.29 acres and the Sungai Kob Division with 923.18 acres. However, the acquired lots are part of the Sera and Kelang Baru Divisions which are planted with rubber and oil palm. To the west and south are industrial and residential areas while to the east and north are agriculture lands with rubber and oil palm. Electricity and water supply and telephone lines are available here.

The learned High Court judge rejected the first of the appellant's four comparables namely Lot 754, now Lot 855, because the transaction at RM20,000 per acre was eleven years earlier. Further, the comparable is only 65.240 acre in area while the scheduled lands have an area of 1,598 acres.

The second comparable was for the sale of part of Lot 860, now Lot 735, for an area of 100 acres at RM40,000 per acre. But the transaction never got off the ground as the conditions upon which the transaction was subject to were never met as there was no approval from the Foreign Investment Committee, Estate Land Board and for the subdivision and issue of separate documents of title. The learned High Court judge also held that the transaction was eight years earlier than the acquisition of the scheduled lands here.

The third comparable which is Lot 202 Mukim Padang China, Daerah Kulim of 28.47 acres changed hands on 21 October 1989 at RM42,150 per acre. The learned High Court judge rejected it because of the difference in size and also because it was not estate land and not subject to the approval of the Estate Land Board. Further, no details were furnished as to the state of the land, the location, the status of the title and the parties to the transaction.

As for the fourth comparable at Lot 735 (part) Mukim Padang China, Daerah Kulim, it was rejected because no details of the nature of the land were given at the time of acquisition. Also, the sizes were different as the said comparable was only 19.637 acres in area. Further, the acquisition was about ten years earlier on 10 September 1981 with the intervening market recession between 1985 and 1988.

The learned High Court judge was also not happy with the reasoning of the appellant's valuer, as compared to the respondent's valuer, as to the different values per acre based on the zoning of the areas. Consequently, he was at a loss to understand as to why the appellant had been unhappy with the collector's award. He had accordingly dismissed the appellant's claim.

We had dutifully deliberated on the matter and can find no reason to interfere with the finding of the learned High Court judge. We, therefore, dismiss the appeal with costs and order that the deposit is to go to the respondent to account of their taxed costs.